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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1926

THE UNITED STATES
Petitioner

v.

STONE & DOWNER CO., and LOWE DONALD & CO.
Respondents

No. 150
On Writ of Certiorari to the United States Court of Customs Appeals

MOTION TO DISMISS OR AFFIRM
with
BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

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ARGUMENT 12–25

I. The Writ of Certiorari should be dismissed because the present respondents obtained a final judgment in their favor which has never been reversed nor modified, against the present petitioner, in a prior suit, in which the present question was distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery and cannot be disputed in this second suit between the same parties 12

1. The parties to the present suit were parties in Suit 2215 decided in Stone & Downer Co. *v.* United States, 12 Ct. Cust. Appls. 62 12

2. The importations covered by the present suit are of exactly the same character as those covered by the prior suit 13

3. The point in question presented for determination in the present suit is the same as that litigated and determined in Suit 2215 14

4. The additional testimony introduced in the present suit did not raise any new question, nor does it change the facts 16

5. The final unmodified judgment of the

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United States Court of Customs Appeals in a prior suit between the present parties having adjudicated the questions presented in the suit brought to this Court by the present writ, there is no question in the merits left open for argument in this Court and the writ should be dismissed 17

II. The judgment of the Court of Customs Appeals should be affirmed because its correctness is conclusively established by its prior decision upon the same question and further argument is needless and could serve no purpose other than delay 25

Conclusion 25

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